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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1939.

No. 176.

HAGGAR COMPANY, PETITIONER,

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF OF AMICUS CURIAE.

THEODORE B. BENSON,
Amicus Curiae.

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104 Fed. (2d) 679,
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OCTOBER TERM, 1939.

No. 176.

HAGGAR COMPANY, *Petitioner*,

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, *Respondent*.

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

BRIEF OF AMICUS CURIAE.

The undersigned respectfully petitions this Honorable Court for leave to file a brief as amicus curiae in the above-entitled cause. The Solicitor General and counsel for the petitioner have assented in writing, as indicated by letters filed with the Clerk of this Court.

This application is made by the undersigned as counsel for the petitioner in the case of *Philadelphia Brewing Company* v. *United States of America*, now pending in the Court of Claims of the United States on defendant's motion for new trial.

Respectfully submitted,

THEODORE B. BENSON.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1939.

No. 176.

HAGGAR COMPANY, *Petitioner*,

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, *Respondent*.

On Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

BRIEF OF AMICUS CURIAE.

Preliminary Statement.

This brief is filed in behalf of Philadelphia Brewing Company, plaintiff in a suit against the United States in the Court of Claims and decided in its favor —— Ct. Cl. ——, 27 Fed. Supp. 583, motion for new trial denied and second motion filed November 8, 1939.

In that case the plaintiff filed a capital stock tax return on August 4, 1933, and therein reported the declared value of its capital stock in the amount of $1,500,000.00 and the capital stock tax in the amount of $1,500.00. The return was prepared by the plaintiff's president, who did not have before him an accurate statement of the earnings. On September 23, 1933, and within the time allowed for filing capital stock tax returns the plaintiff prepared a second return in which the declared value of the capital stock, determined by an accountant on the basis of actual earnings, was stated in the amount of $3,499,999.00 and the capital stock tax in the amount of $3,499.00. The return, together with the plaintiff's check in the amount of $1,999.00 were mailed to the Collector of

Internal Revenue. The second return together with the check in the amount of $1,999.00 were returned to the plaintiff by the Collector with the explanation that he would not accept "an amended return."

The suit filed by the plaintiff in the Court of Claims is for the refund of $11,420.13 excess profits and income taxes and interest paid for the calendar year 1930. The question presented to the Court of Claims for decision is the amount of the adjusted declared value of the plaintiff's capital stock to be used as the basis for determining the excess profits tax, as in Haggar Company.

THE ARGUMENT.

Section 216 (a) of the National Industrial Recovery Act imposes an excess profits tax on such portion of the net income as is in excess of a stated percentage of the adjusted declared value of the plaintiff's capital stock tax, "determined as provided in Section 215" of the Act.

The provision of Section 215 (f) is that the adjusted declared value shall be the value as declared by the corporation in its first return under this section. (Which declaration of value can not be amended.) The United States Circuit Court of Appeals for the Fifth Circuit in the instant case construed the provision in Section 215 (f) to mean that during the period allowed for filing the return and before the due date thereof the plaintiff was not entitled to correct or amend the declaration of value. The Court in reaching its conclusion necessarily ignored the "return" and the provisions of subsection (d) in which the requisites of the return are stated and in which the time for filing the return is likewise stated. The error of the Court of Appeals for the Fifth Circuit results from the failure of the Court to give full consideration to the several provisions in Section 215 and the failure of the Court to hold that the return mentioned in subparagraph (f) is the same return that under subparagraph (d) was not due to be filed until September 29, 1933, after the time the plaintiff sought to correct the declared value of its capital stock.

In *C. H. Mead Coal Company* v. *Commissioner*, 106 Fed.

(2d) 388, the United States Court of Appeals, following and approving the decision of the Court of Claims in *Philadelphia Brewing Company* v. *United States*, reversed the Board of Tax Appeals and held that, prior to the due date of the return, corrections might be made.

The opinion of Judge Littleton in *Philadelphia Brewing Company* v. *Commissioner*, covers the question so fully that it is believed that little can be added thereto. The following is quoted from the opinion:

> "This declared value, which was set forth in a corrected capital stock tax return, was made and the corrected return was filed with the collector September 23, 1933, before the expiration of time allowed by the statute and the regulations for filing the 1933 return and for declaring the value of capital stock for its first taxable year for the purpose of the capital stock and excess-profits tax imposed by sections 215 and 216. The time within which to make its declaration of value of its capital stock did not expire until September 29, 1933, and we think, in the circumstances, the proper interpretation of the statute, in the light of the facts and the reports of the Congressional committees is that plaintiff could, before the expiration of the time for filing its capital stock tax return, proceed to file with the Commissioner its final and corrected declaration of value of its capital stock in a corrected capital stock tax return, even though the corporation had filed a capital stock tax return in which a different value had been declared.
>
> "With respect to the first taxable year in which the statute required the corporation to make a declaration of the value of its capital stock, we think it is clear that the statute intended that a taxpayer should have the right until the expiration of the time for filing its capital-stock tax return for that year to make its declaration of the value of its capital stock which was to be thereafter binding and used as a basis for the determination of the excess-profits tax in its first and subsequent income-tax years ending after the close of the first capital-stock tax year. From this the reference in subdivision (f) of section 215 of the National Industrial Recovery Act with respect to 'the value as declared by the corporation in its first return under this section,' should be interpreted to mean the value of the capital stock as finally declared by the corporation

for its capital-stock taxable year within the time allowed by statute and the regulations for making its capital-stock tax return for such year. This interpretation conforms to the declared purpose of the Act.

"In the Conference Report on Section 701 of the Revenue Act of 1934, which carried forward the provisions of section 215 of the National Industrial Recovery Act (Congressional Record, Vol. 78, Part 7, p. 7827), it was said by the managers on behalf of the House of Representatives that 'For the first year the tax is measured by the value of the capital stock as declared by the corporation as of the close of its last taxable year ending on or before June 30, 1934. The value of the capital stock having been declared for the first year, such value may not be subsequently amended.' Inasmuch as the primary purpose of the statute was to require the taxpayer to make a declaration of the value of its capital stock at the close of its last capital-stock tax year ending on or before June 30, 1934, and to be subsequently bound thereby in subsequent capital-stock tax years and each income-tax year ending after the close of the first taxable capital-stock year, no reasonable rule of interpretation requires the conclusion that the corporation may not, within the time allowed for filing a capital stock-tax return for the first year, declare the value of its stock upon which it intends to stand and be bound in subsequent years in a timely corrected or amended return disclosing a declared value different from the value previously stated in a capital stock-tax return filed for such year. *Glenn* v. *Oertel Company*, 97 Fed. (2d) 495. The statute was not dealing specifically with returns as such, but with value and taxable years."

Respectfully submitted,

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Of Counsel.

SUPREME COURT OF THE UNITED STATES.

No. 176.—October Term, 1939.

Haggar Company, Petitioner, *vs.* Guy T. Helvering, Commissioner of Internal Revenue.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[January 2, 1940.]

Mr. Justice Stone delivered the opinion of the Court.

Decision in this case turns on the question whether a capital stock tax return filed pursuant to § 215 of the National Industrial Recovery Act of 1933, 48 Stat. 195, 207, may be amended within the time fixed for filing the return.

Sections 215 and 216 of the National Industrial Recovery Act impose interrelated taxes on domestic corporations, namely an annual capital stock tax and an annual tax on profits in excess of 12½ per cent of the capital stock, calculated on the basis of the value of the capital stock as fixed by the corporation's return for the first year in which the tax is imposed.

Section 215(a) imposes on domestic corporations an annual tax with respect to carrying on or doing business for any part of the taxable year at the rate of "$1 for each $1,000 of the adjusted declared value of its capital stock." Section 215(f) provides that "For the first year ending June 30 in respect of which a tax is imposed by this section upon any corporation, the adjusted declared value shall be the value, as declared by the corporation in its first return under this section (which declaration of value cannot be amended), as of the close of its last income-tax taxable year ending at or prior to the close of the year for which the tax is imposed by this section. . . . For any subsequent year ending June 30, the adjusted declared value in the case of a domestic corporation shall be the original declared value" as changed by certain prescribed capital adjustments occasioned by increases and decreases of capital occurring after "the date as of which the original declared value was declared." Section 216(a) imposes an annual tax upon

so much of the net income of a corporation taxable under § 215(a) as is in excess of 12½ per cent of the "adjusted declared value of its capital stock . . . as of the close of the preceding income-tax taxable year (or as of the date of organization if it had no preceding income-tax taxable year) . . . ."

It will be observed that by § 215(a) and (f) the declared value of capital stock which is made the basis of computation of both taxes is not required to conform either to the actual or to the nominal capital of the taxpaying corporation; and that the declared value for the first taxable year, with the addition or subtraction of specified items of subsequent capital gains or losses is made the basis of the computation of both taxes in later years. The taxpayer is thus left free to declare any value of capital stock for its first taxable year which it may elect, but since the declared value for the first year is a controlling factor for the computation of taxes for later years, the statute provides that the declaration once made cannot be amended. Because of the method of computation, increase or decrease in the declared value of capital, and of the corresponding tax, produces, as the case may be, a decrease or an increase in the tax on excess profits.

In August, 1933, petitioner, a Texas corporation, mistakenly believing that it was required to state the par value of its issued capital stock in its tax return, filed a timely return for the year ending June 30, 1933, declaring the value of its entire capital stock to be $120,000 and paid the tax of $120. The date for filing returns for that year having been extended to September 29, 1933, T. D. 4368, 4386, petitioner before that date filed an amended return, declaring the value of its capital stock to be $250,000. On March 15, 1934, petitioner filed its income and excess profits tax return for the calendar year 1933. The Commissioner, having refused to accept the amended capital stock return, gave notice of a deficiency in the excess profits tax calculated upon the basis of the capital stock value of $120,000 as declared in petitioner's original return.

The Board of Tax Appeals determined that petitioner's capital stock and excess profits tax should be computed on the basis of $120,000 capital stock value as originally stated instead of $250,000 stock value declared in its amended return, found a deficiency, and entered its order accordingly. 38 B. T. A. 141. The Circuit Court of Appeals for the Fifth Circuit affirmed, holding that § 215(f) by its terms precluded

any amendment of the tax return for the first year even though made within the time allowed for filing the return. 104 F. (2d) 24. We granted certiorari October 9, 1939, to resolve a conflict of the decision below with that of the Court of Appeals for the Sixth Circuit in *Glenn* v. *Oertel Co.*, 97 F. (2d) 495, and that of the Court of Claims in *Philadelphia Brewing Company* v. *United States*, 27 Fed. Supp. 583.

The Commissioner founds his argument in support of the decision below upon a literal reading of the introductory sentence of § 215(f) already quoted, which, he argues, precludes even a timely amendment of the tax return for the first year, and upon the administrative and Congressional interpretation of the statute. He insists that the phrase "first return" in the clause "declared value shall be the value as declared by the corporation in its first return under this section (which declaration of value cannot be amended)", means the first paper filed by the taxpayer as a return, and that these words plainly forbid any amendment of the declared value of the capital stock, even though made within the time allowed for filing the return.

In making these contentions the Commissioner concedes that the amount of the declared value of capital fixed for the first year is a matter of indifference to the Government since the statute leaves the taxpayer free to declare any amount which its fancy may choose and that for any reduction in capital stock tax effected by the declaration of a low value of the capital stock there is an accompanying increase in excess profits taxes. He concedes that if petitioner had filed but a single return on the date of filing the amended return, stating the value of the capital stock as $250,000 instead of $120,000, the Government would have been concluded by the taxpayer's declaration and that it has long been the practice of the department, in the cases of other types of tax to accept an amended return, filed within the period allowed for filing returns, as the return of the taxpayer for the taxable year. He concedes also, as he logically must, that the argument leads to the conclusion that a mistake in the declaration of value whether of law or of fact, however serious and excusable, cannot be corrected by a timely amendment of the return.

All statutes must be construed in the light of their purpose. A literal reading of them which would lead to absurd results is to be avoided when they can be given a reasonable application consistent with their words and with the legislative purpose. *Hawaii* v. *Mankichi*, 190 U. S. 197; *United States* v. *Katz*, 271 U. S. 354; *Sorrells*

v. *United States*, 287 U. S. 435, 446; *Burnet* v. *Guggenheim*, 288 U. S. 280, 285; *Armstrong Co.* v. *Nu-Enamel Corp.*, 305 U. S. 315, 332-3. Here the purpose of the statute is unmistakable. It is to allow the taxpayer to fix for itself the amount of the taxable base for purposes of computation of the capital stock tax, but with the proviso that the amount thus fixed for the first taxable year shall be accepted, with only such changes as the statute prescribes for the purpose of computing the capital stock and excess profits taxes in later years. Congress thus avoided the necessity of prescribing a formula for arriving at the actual value of capital for the purpose of computing excess profits taxes, which had been found productive of much litigation under earlier taxing acts, see Sen. Rep. 52, 69th Cong., 1st Sess., pp. 11-12; cf. *Ray Consolidated Copper Co.* v. *United States*, 268 U. S. 373, 376. At the same time it guarded against loss of revenue to the Government through understatements of capital, by providing for an increase in excess profits tax under § 216 ensuing from such understatements.

It is plain that none of these purposes would have been thwarted and no interest of the Government would have been harmed had the Commissioner, in conformity to established departmental practice, accepted the petitioner's amended declaration. It is equally plain that by its rejection petitioner has been denied an opportunity to make a declaration of capital stock value which it was the obvious purpose of the statute to give, and that denial is for no other reason than that the declaration appeared in an amended instead of an unamended return. We think that the words of the statute, fairly read in the light of the purpose, disclosed by its own terms, require no such harsh and incongruous result.

Section 215 nowhere mentions amendment of returns or amended returns. It speaks of "declared value" for the first tax year and provides that the "declaration of value" cannot be amended. The "declaration of value" is that of the corporation in its "first return under this section". The "first return" as the context shows is the return for the first tax year of the taxpayer and the characterization of the return as "first" is obviously used to distinguish the return made for the first year from the return "for any subsequent year" in which the "adjusted declared value" is required by the same section to conform to a formula based on the "declared value" for the first year and which, for that reason, "cannot be amended".

"First return" thus means a return for the first year in which the taxpayer exercises the privilege of fixing its capital stock value for tax purposes, and includes a timely amended return for that year. A timely amended return is as much a "first return" for the purpose of fixing the capital stock value in contradistinction to returns for subsequent years, as is a single return filed by the taxpayer for the first tax year. *Glenn* v. *Oertel Co., supra; Philadelphia Brewing Company* v. *United States, supra;* see also, similarly construing the phrase "first return" under § 114(b)(4) of the Revenue Act of 1934, 48 Stat. 680, 710; *C. H. Mead Coal Co.* v. *Commissioner*, 106 F. (2d) 388, 390; cf. *Pacific National Co.* v. *Welch*, 304 U. S. 191, 194. Thus read the statute gives full effect to its obvious purposes and to the evident meaning of its words. To construe "first return" as meaning the first paper filed as a return, as distinguished from the paper containing a timely amendment, which, when filed is commonly known as the return for the year for which it is filed, is to defeat the purposes of the statute by dissociating the phrase from its context and from the legislative purpose in violation of the most elementary principles of statutory construction.

Article 24 of Treasury Regulations 64 (1933 ed.), under § 215(f) of the National Industrial Recovery Act, in force when the petitioner filed its amended return, did not call for any different construction from that which we have indicated is the correct one. The article made no mention of the "first return". It pointed out merely that the original declared value would be the basis of the tax for the first and later years, and stated "This value once having been declared may not subsequently be changed either by the corporation or by the commissioner." This evidently refers to the parenthetical clause of § 215(f) "which declaration cannot be amended" which phrase concededly does not preclude an effective declaration of value in a timely amended return.[1]

Sections 215 and 216 of the National Industrial Recovery Act were reenacted as §§ 701 and 702 of the 1934 Revenue Act, 48 Stat. 680, 769, 770. That act, § 703, amended the National Industrial

[1] The Government concedes in its brief that the parenthetical clause "which declaration cannot be amended" continued in the capital stock tax section, § 601, of the 1938 Revenue Act, 52 Stat. 447, 565, does not preclude an effective declaration of value in a timely amended return for the first tax year. If the phrase "first return" in § 215(f) had that effect, then the parenthetical phrase concededly prohibiting amendments in tax returns of later years would have been superfluous.

Recovery Act so as to provide that the capital stock tax and excess profits tax imposed by §§ 215 and 216 of the act last mentioned should not apply respectively to any taxpayer in any year except the years ending June 30, 1933 and June 30, 1934. The amended Regulations 64 (1934 ed.), relating to §§ 701 and 702 of the Revenue Act of 1934, are prefaced with the statement "It must constantly be borne in mind that these regulations relate only to the tax imposed by § 701 of the Revenue Act of 1934. With respect to the tax imposed by § 215 of the National Industrial Recovery Act consult Regulations 64, edition of 1933". This warning was repeated in Regulations 64, 1936 edition, under the corresponding §§ 105 and 106 of the 1935 Revenue Act, 49 Stat. 1014, 1017-1019.

Since the regulations under the Revenue Acts for 1934 and 1935 are thus made inapplicable to the taxpayer's stock return under the National Industrial Recovery Act for the year ending June 30, 1933, they are without force for present purposes except as they are persuasive commentaries on the meaning of the language of § 215(f) of the National Industrial Recovery Act which was carried forward into later revenue acts. Article 41(d) of Treasury Regulations 64, published under the 1934 Act, declared that "First return means the first capital stock tax return filed by a corporation for its first taxable year", a definition which was continued in Article 44 of Regulations 64 (1936 ed.), under the corresponding § 105 of the Revenue Act of 1935. Article 44 of the latter regulation for the first time informed taxpayers that an effective declaration of value for the first tax year could not be made in a timely amended return, saying, "A subsequent return declaring a different value, even though filed before the expiration of the prescribed period, is therefore not acceptable under the statute."

On the argument the Commissioner admitted that this ruling served no administrative or governmental convenience or purpose apart from compliance with the supposed command of the statute. There is thus a complete absence of those reasons which ordinarily lead courts to give persuasive force to an administrative construction and which justify their acceptance of it in preference to their own. The regulations have not been consistent in their interpretation of the statute and do not embody the results of any specialized departmental knowledge or experience. Cf. *Brewster* v. *Gage*, 280 U. S. 327, 336; *Sanford* v. *Commissioner of*

Internal Revenue, No. 34, October term, 1939, decided November 6, 1939. No one, not even the Government, will be prejudiced by its rejection, and as we have said the construction flies in the face of the purposes of the statute and the plain meaning of its words. Judicial obeisance to administrative action cannot be pressed so far.

It is said that Congress, by the change of the language of the capital stock provisions adopted in the 1938 Revenue Act has attributed to the earlier statute the same meaning as that ascribed to it by the administrative construction. It is familiar doctrine that Congress, by reenacting a section of the Revenue Act without change, approves and adopts a consistent administrative construction of it. But here the argument is that by amendment of the statute, which would preclude such a construction in the future, Congress has also declared that the departmental construction was that intended by the earlier Congress which enacted the statute.

Section 601 of the 1938 Act, 52 Stat. 447, 565, in addition to other changes in the capital stock and excess profits tax provisions, prescribed that the "adjusted declared value" should be determined with respect to three year periods, beginning with the year ending June 30, 1938, and denominated the first year of each period a "declaration year." Section 601(f)(2) provided that the declared capital stock value for purposes of the tax shall be the value as declared by the corporation "in its return for such declaration year (which declaration of value cannot be amended)". Since, under the new legislation, the return for the declaration year for each three-year period and not that for the first tax year of the taxpayer is controlling, there was no occasion for repeating the phrases "first year" and "first return" which had appeared in the earlier legislation and the new section dropped from the statute the words which had given rise to the earlier administrative construction. This was pointed out by the house committee report recommending the amendment,[2]

[2] "The new section also alleviates the rigid provision of section 105(f) of the 1935 act that the valuation shall be as declared by the corporation in its 'first' return. Errors of calculation or other errors sometimes occur in first returns, and denial of all opportunity for correction appears unduly restrictive. Accordingly, the word 'first' as it appears the second time in section 105(f) of the 1935 act, as amended, is eliminated from the corresponding language appearing in subsection (f) (2) of the new section. This will serve to give a corporation the right, so long as it acts within the time allowed for filing its return (including the last day of any extension period) for the year for which a declaration of value is required, to file subsequent returns for that year showing a different valuation, the valuation shown by the last timely return being binding." H. Rept. 1860, Committee on Ways and Means, 75th Cong., 3rd Sess., p. 62.

stating that the change would serve to permit the taxpayer to amend its declaration by timely amendment of the return for the declaration year and adding, "denial of all opportunity for correction appears unduly restrictive."

It must be assumed that Congress was aware through its committees of the change in the regulations which in 1936 had construed the statute as precluding an effective declaration in a timely amended return, and of the litigation then pending in this case and in *Glenn* v. *Oertel, supra*, in which the departmental construction had been challenged as "unduly restrictive." In the face of the legislative expression of dissatisfaction with the earlier statute as construed, Congressional purpose to declare that such was the intended meaning is not to be inferred merely from the fact that the amendment providing for the future said nothing as to the past. If we are to draw inferences it would seem as probable that Congress was content to leave the problems of the past to be solved by the courts where they were then pending, rather than to preclude their solution there. Action so ambiguous in its implications as to the past is wanting in that certainty and evident purpose which would justify its acceptance as a legislative declaration of what an earlier Congress had intended rather than an effort to make clear that which had been rendered dubious by unwarranted administrative construction. Cf. *Jordan* v. *Roche*, 228 U. S. 436, 445; *Helvering* v. *New York Trust Co.*, 292 U. S. 455; *Noble* v. *Oklahoma City*, 297 U. S. 481, 492. Retroactive declarations of legislative intent, prejudicial to those who have acted under an earlier statute whose construction seems clear, it would seem, ought not to be implied more than the legislative intention to give retroactive operation to a new statute. See *Hassett* v. *Welch*, 303 U. S. 303, 314 and cases cited; cf. *Noble* v. *Oklahoma City, supra.*

Reversed.

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Test:

Clerk, Supreme Court, U. S.